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05/09/05

PATENT APPLICATION

ATTORNEY DOCKET NO. __10005386-2__

MAY 0 6 2005

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Michael A. Tremblay

Confirmation No.: 4550

Application No.: 10/720,494

Examiner: S. A. Alam

Filing Date: 11/24/2003

Group Art Unit: 2172

Title: SYSTEM AND METHOD FOR USER ADAPTIVE SOFTWARE INTERFACE

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Sir:

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on __March 7, 2005__.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

( ) (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)
for the total number of months checked below:

- ( ) one month $120.00
- ( ) two months $450.00
- ( ) three months $1020.00
- ( ) four months $1590.00

( ) The extension fee has already been filled in this application.

(X) (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account **08-2025** the sum of __$500.00__. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Michael A. Tremblay
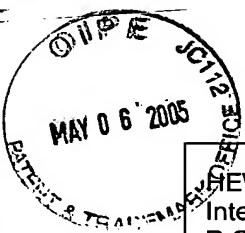
By _____

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Docket No.: 10005386-2
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Michael A. Tremblay

Application No.: 10/720,494   Confirmation No.: 4550

Filed: November 24, 2003   Art Unit: 2172

For: SYSTEM AND METHOD FOR USER   Examiner: S. A. Alam
      ADAPTIVE SOFTWARE INTERFACE

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on March 7, 2005, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

I.	Real Party In Interest	
II	Related Appeals and Interferences	
III.	Status of Claims	
IV.	Status of Amendments	
V.	Summary of Claimed Subject Matter	
VI.	Grounds of Rejection to be Reviewed on Appeal	
VII.	Argument	
VIII.	Claims Appendix	

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IX.　　　　　Evidence Appendix
X.　　　　　Related Proceedings Appendix

I.　REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hewlett-Packard Development Company, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas.

II.　RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.　STATUS OF CLAIMS

A.　Total Number of Claims in Application

There are 23 claims pending in application.

B.　Current Status of Claims

　　1.　Claims canceled: 7, 15, 16, and 19-23

　　2.　Claims withdrawn from consideration but not canceled: None

　　3.　Claims pending: 1-6, 8-14, 17-18, and 24-31

　　4.　Claims allowed: None

　　5.　Claims rejected: 1-6, 8-14, 17-18, and 24-31

C.　Claims On Appeal

The claims on appeal are claims 1-6, 8-14, 17-18, and 24-31.

IV.   STATUS OF AMENDMENTS

Appellant filed an Amendment After Final Action, dated January 10, 2005, that amended several claims solely for the purpose of simplifying the issues on appeal (i.e., removing a rejection under 35 U.S.C. § 112, second paragraph). The Advisory Action, dated February 11, 2005, did not indicate whether the amendment would be entered for the purpose of appeal. However, Appellant's attorney (Christopher S.L. Crawford) verified with the Examiner on April 28, 2005 via telephone that the amendment would be entered for the purpose of appeal. Accordingly, the claims on appeal (as reflected in the claim appendix) are the claims presented in the Amendment After Final Action, dated January 10, 2005.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment, a computer readable medium, containing processor executable instructions for providing assistance to a user (see paragraphs [0025] and [0026] and element 206 in FIG. 2), comprises: code for monitoring user events (element 101 in FIG. 1A and paragraph [0010]); code for determining whether a series of user events is unrelated (see element 105 in FIG. 1A and paragraph [0011]); and code for offering assistance to a user, wherein the code for offering assistance is operable upon determination by the code for determining that the series of user events is unrelated (see element 108 in FIG. 1A and paragraphs [0013] and [0014]).

In another embodiment, a method, for providing an adaptive computer user interface, comprises: monitoring operating system events associated with input from a user to generate a series of operating system events (element 101 in FIG. 1A and paragraph [0010]); determining whether the series of operating system events is unrelated (see element 105 in FIG. 1A and paragraph [0011]); and when the series of operating system events is unrelated, offering help to the user (see element 108 in FIG. 1A and paragraphs [0013] and [0014]).

In another embodiment, a system (see computer system 200 including CPU 201, input devices 202 and 213, and storage device(s) 206 and paragraphs [0024]-[0027]), for providing a computer user interface, comprises: means for monitoring user input (element 101 in FIG. 1A and paragraph [0010]); means for determining whether a series of events is a unrelated

series (see element 105 in FIG. 1A and paragraph [0011]); and means for offering assistance to the user, wherein the means for offering assistance is operable to offer assistance when the means for determining determines that the series of events is a unrelated series (see element 108 in FIG. 1A and paragraphs [0013] and [0014]). In another embodiment, the means for determining comprises means for determining a timing relationship between events of said series of events. (see paragraphs [0011]-[0012]).

The summary is set forth in several exemplary embodiments that correspond to the independent claims. Discussions about elements and recitations of these claims can be found at least at the cited locations in the specification and drawings.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 8, 17, and 24-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,339,436 to Amro et al. (hereinafter "Amro"). Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro. Claims 3-6, 9-14, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro in view of U.S. Patent No. 5,991,756 to Wu (hereinafter "Wu"). Appellant requests the Board to review each of these grounds of rejection.

It is noted that the statements of the grounds of rejection are based upon the best understanding of Appellant. Specifically, the Office Action dated November 10, 2004 states that claims 8-14 and 27-29 are rejected for the same reasons as applied hereinabove in regard to claims 1-6 and 24-26. Office Action, page 8. Likewise, the Office Action states that claims 17-19 and 30-31 are rejected for the same reasons as applied hereinabove in regard to claims 1-6 and 24-26. *Id.*

VII.   ARGUMENT

Rejection under 35 U.S.C. § 102(e)

Claims 1, 8, 17, and 24-31 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,339,436 to Amro et al. (hereinafter "Amro").

It is well settled that to anticipate a claim, the reference must teach every element of the claim. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim." *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). Furthermore, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913 (Fed. Cir. 1989). Appellant respectfully submits that Amro does not satisfy these requirements.

Claims 1, 8, and 17

Claim 1 recites, in part, "code for determining whether a series of user events is unrelated."

Claim 8 recites, in part, "determining whether said series of operating system events is unrelated."

Claim 17 recites, in part, "means for determining whether a series of events is a unrelated series."

Amro is related to offering the user the ability to create user-defined help files for a software application. Specifically, as the user interacts with the software application, "events" occur. The events are operating system constructs that represent certain system actions (e.g., pressing a key, a mouse click, etc.). Col. 2, lines 56-59 of Amro. The system in Amro analyzes each event to determine whether a respective event is a "spy event" or a "user event." Col. 2, lines 47-49. Spy events are events for which the system in Amro monitors (e.g., the selection of a particular menu option). Col. 2, lines 49-553. If a spy event is detected, previously defined help text is displayed. Col. 2, lines 64 through col. 3, line 2. If a user event is detected, the user is allowed to create customized help text for subsequent display. Col. 3, lines 2-7. Upon this event handling functionality, the Examiner concludes that the system of Amro monitors multiple events and "compare[s] to show that a series of events are related or unrelated." Office Action, page 4.

Amro does monitor multiple events such as "spy events" and "user events." However, unlike the assertion by the Examiner, Amro does not determine whether a series of events is "unrelated." Specifically, in Amro, a discrete event is analyzed upon its own to determine whether the event is a spy event or user event. *See* col. 2, line 59 through col. 3, line 13 of Amro. No other event is employed for the determination made in Amro. *Id.* Accordingly, there is no basis in Amro to support the assertion that the system in Amro determines whether a series of events is "unrelated."

The Examiner attempts to address this shortcoming by stating that claims must be given their "broadest reasonable interpretation in light of the specification." Office Action, page 2. However, this mandate includes a restriction upon the interpretation of the claims. Namely, the interpretation must be "reasonable." *In re Prater*, 162 USPQ 541, 550-51 (CCPA 1969). The attempt to read analyzing an isolated event to determine whether the isolated event is a spy event or user event to satisfy the limitations of claims 1, 8, and 17 is unreasonable.

Claim 1 further recites "code for offering assistance to a user, wherein said code for offering assistance is operable upon determination by said code for determining that said series of user events is unrelated." Claim 8 recites "when said series of operating system events is unrelated, offering help to said user." Claim 17 further recites "means for offering assistance to said user, wherein said means for offering assistance is operable to offer assistance when said means for determining determines that said series of events is a unrelated series."

Amro only displays help text when an individual event is a "spy event." Amro does not offer assistance when a series of events is "unrelated" and fails to disclose the preceding limitations of claim 1, 8, and 17.

Accordingly, Amro does not disclose each and every limitation of claims 1, 8, and 17. Claims 24-31 respectively depend from base claims 1, 8, and 17 and, hence, inherit all limitations of their respective base claim. Appellant submits that claims 1, 8, 17, and 24-31 are not anticipated by Amro.

<u>Claims 24, 27, and 30</u>

Claim 24 recites "wherein said code for determining is operable to analyze a timing relationship between events in said series."

Claim 27 recites "wherein said determining whether said series of operating system events is unrelated comprises: calculating an amount of time between operating system events in said series."

Claim 30 recites "wherein said means for determining whether a series of events is a unrelated series, comprises: means for determining a timing relationship between events of said series of events."

The Examiner asserts that Amro discloses the limitations of claims 24, 27, and 30 and cites col. 2, line 59 through col. 3, line 13 of Amro to support the assertion. Office Action, pages 6 and 8. Col. 2, line 59 through col. 3, line 13 of Amro recites:

> When an event from the application occurs, information concerning this event is obtained from the operating system's event queue by the spy thread and sent to the event handling loop of the monitoring program (steps 204-218). The event handling loop determines which events to act upon and what the action should be. If the event is either a spy or user event, via step 204, the monitoring program searches the help text file for a corresponding help text, via step 206. If a corresponding help text is found, then the text is displayed in a text area, such as a window, integrally with the application, via step 210.
> If the event is specifically a user event, via step 212, then the monitoring program gets the user text updates for the event, via step 214. The help text file is then updated with the new help test, via step 216, with the help text stored as corresponding to the event.
> If the event is neither a spy event nor a user event, then it is another type of GUI event and the monitoring program handles it accordingly, via step 218. The monitoring program then loops back to the beginning of the event handling loop to await the next event. This continues until the monitoring program is terminated, via step 220.

The above relied-upon portion of Amro makes no mention of any timing relationship. The above relied-upon portion of Amro makes no mention of calculating an amount of time between operating system events. Accordingly, there is simply no disclosure in Amro corresponding to the limitations of claims 24, 27, and 30. Claims 24, 27, and 30 are not anticipated by Amro.

Claims 25 and 29

Claim 25 recites "wherein said code for determining is operable to determine whether a plurality of menus are accessed by said user without invoking a program action associated with said plurality of menus."

Claim 29 recites "wherein said determining whether said series of operating system events is unrelated comprises: determining whether said user generates a plurality of operating system events without invoking program tasks."

The Examiner asserts that Amro discloses the limitation of claims 25 and 29 and cites col. 4, lines 1-15 to support the assertion. Office Action, pages 6 and 8. Col. 4, lines 1-15 of Amro recite:

> User One 302 indicates his wish to add text to this empty help text window by clicking the right mouse button inside the window. User One's clicking of the right mouse button is recognized by the monitoring program 310 as a user event, via step 204. It searches the user-defined dynamic help text file 314 for a corresponding help text for the start screen, via step 206. Since there is no corresponding help text, an empty help text window continues to be displayed. Since the event is a user event, via step 212, the monitoring program 310 then gets User One's help text via step 214. For example, User One 302 may input "Select main vendor file to open . . . " as the help text. This help text is then stored in the user defined dynamic help text file 314, via step 216, as corresponding to start screen. The monitoring program 310 then loops back to await the next event.

Thus, Amro merely discloses enabling a user to enter user-defined help text by clicking inside a window. However, such disclosure is insufficient to disclose "wherein said code for determining is operable to determine whether a plurality of menus are accessed by said user without invoking a program action associated with said plurality of menus." Likewise, Amro fails to disclose "determining whether said user generates a plurality of operating system events without invoking program tasks." Accordingly, claims 25 and 29 are not anticipated.

Rejections under 35 U.S.C. § 103(a)

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro. Claims 3-6, 9-14, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Amro in view of U.S. Patent No. 5,991,756 to Wu (hereinafter "Wu").

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *Id.* Finally, the applied references must teach or suggest all the claim limitations. *In re Fine*, 5 USPQ2d 1596, 1599-1600 (Fed. Cir. 1988). Appellant submits that the applied references do not satisfy these criteria.

All Limitations Have Not Been Established

Claims 2-6 depend from claim 1 and, hence, inherit all limitations of claim 1. Claim 1 recites "code for determining whether a series of user events is unrelated" and "code for offering assistance to a user, wherein said code for offering assistance is operable upon determination by said code for determining that said series of user events is unrelated."

Claims 9-14 depend from claim 8 and, hence, inherit all limitations of claim 8. Claim 8 recites "determining whether said series of operating system events is unrelated" and "when said series of operating system events is unrelated, offering help to said user."

Claims 18 depends from claim 17 and, hence, inherit all limitations of claim 17. Claim 17 recites "means for determining whether a series of events is a unrelated series" and "means for offering assistance to said user, wherein said means for offering assistance is operable to offer assistance when said means for determining determines that said series of events is a unrelated series."

For the reasons discussed above in regard to the rejection under 35 U.S.C. § 102(e), Amro does not teach or suggest each and every limitation of claims 1, 8, and 17. Wu does not cure these deficiencies in Amro, since Wu fails to teach or suggest the recited limitations. Wu is merely related to a search engine that returns documents according to multi-term

queries. *See* Abstract of Wu. Because the system disclosed in Wu involves a search engine deployed on a web server, Wu is not concerned with events occurring on the user's system. Wu does not determine whether is series of "events," "user events," or "operating system events" is "unrelated." Likewise, Wu does not offer assistance upon determining that the series is "unrelated."

Because the applied references (either alone or in combination) do not teach or suggest each and every limitation of claims 2-6, 9-14, and 18, a prima facie case of obviousness has not been established for claims 2-6, 9-14, and 18.

Claims 3-6, 9-14, and 18

Sufficient Motivation to Combine Amro and Wu Does Not Exist

In regard to claims 3-6, 9-14, and 18, Appellant respectfully submits that sufficient motivation to combine has not been established. Specifically, the Examiner states that it would have been obvious to combine Wu with the teaching of Amro, "because [the] combination would provide for efficient storage of data while allowing searches to be performed taking into account relationships among data elements in a hierarchy." Office Action, page 8. Appellant respectfully submits that the motivation to combine is merely a repetition of **what** is being combined rather than an articulation of **why** the combination should be made. It is believed that such a motivation is substantively nothing more than a statement that the references could be combined. However, it is well settled that the mere fact that references could be combined is not sufficient to establish a prima facie case of obviousness. *In re Mills*, 16 USPQ2d 1430 (Fed. Cir. 1990).

Additionally, Amro is directed to offering "help files" to users during operation of a software application on the user's system and Wu is directed to "search engine" functionality. There is no articulated basis why the combination of disclosures directed to fundamentally divergent technologies would be appropriate. Specifically, if a set of references are cited to show obviousness, the references must bear some intuitive relationship to one another. The Federal Circuit has held that there must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the art in the field of the invention would make the combination. *In re Fine*, 5 USPQ2d 1596, 1599 (Fed. Cir. 1988). No such reason,

suggestion, or motivation is present to combine the disclosures from the two different technologies of Amro and Wu.

Accordingly, a prima face case of obviousness has not been established for claims 3-6, 9-14, and 18 due to a lack of motivation to combine.

Conclusion

For the reasons provided herein, Appellant respectfully requests the Board to rule that the rejections of the claims are improper.
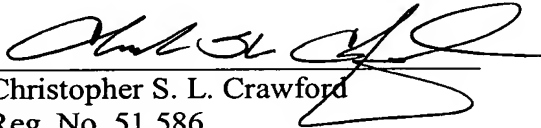
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Date of Deposit: May 6, 2005

Typed Name: Gail L. Miller

Signature: _Gail L. Miller_

Respectfully submitted,

By: _____

Christopher S. L. Crawford
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VIII.   CLAIMS APPENDIX

1.   A computer readable medium containing processor executable instructions for providing assistance to a user, comprising:

code for monitoring user events;

code for determining whether a series of user events is unrelated; and

code for offering assistance to a user, wherein said code for offering assistance is operable upon determination by said code for determining that said series of user events is unrelated.

2.   The computer readable medium of claim 1 wherein said executable instructions are operable to execute as a modification to an operating system.

3.   The computer readable medium of claim 1 further comprising:

code for prompting a user for search terms; and

code for conducting a hierarchical search utilizing said search terms.

4.   The computer readable medium of claim 3 wherein said code for conducting is operable to search user websites when information is not obtained locally on a system executing said code for conducting.

5.   The computer readable medium of claim 3 further comprising:

code for presenting search results to a user.

6.   The computer readable medium of claim 5 further comprising:

code for receiving user input selecting a search result of said search results; and

code for designating said selected search result in a user profile stored locally on said system executing said code for conducting.

7.   (Cancelled)

8.   A method for providing an adaptive computer user interface, comprising:

monitoring operating system events associated with input from a user to generate a series of operating system events;

determining whether said series of operating system events is unrelated; and

when said series of operating system events is unrelated, offering help to said user.

9.   The method of claim 8 further comprising:

prompting the user for search terms; and

performing a search of at least one help facility of an application currently being executed by the user utilizing said search terms.

10.   The method of claim 8 further comprising:

receiving input from said user indicating that search terms do not include information useful to the user; and

performing a search of at least one other help facility.

11.   The method of claim 10 wherein said at least one other help facility is associated with the operating system.

12.   The method of claim 10 wherein said at least one other help facility is associated with a user group web site.

13.   The method of claim 9 further comprising:

receiving input that a search result is pertinent to the user; and

designating said search result in a user profile.

14.   The method of claim 13 further comprising:

performing a second search, wherein said second search is operable to first search content associated with designations in said user profile.

15.   (Cancelled)

16.   (Cancelled)

17.   A system for providing a computer user interface, comprising:

means for monitoring user input;

means for determining whether a series of events is a unrelated series; and

means for offering assistance to said user, wherein said means for offering assistance is operable to offer assistance when said means for determining determines that said series of events is a unrelated series.

18.   The system of claim 17 further comprising:

means for conducting a hierarchical series of searches.

19-23. (Cancelled)

24.   The computer readable medium of claim 1 wherein said code for determining is operable to analyze a timing relationship between events in said series.

25.   The computer readable medium of claim 1 wherein said code for determining is operable to determine whether a plurality of menus are accessed by said user without invoking a program action associated with said plurality of menus.

26.   The computer readable medium of claim 1 further comprising:

code for emptying an event queue of said plurality of user events when said code for determining determines said plurality of user events are related.

27.   The method of claim 8 wherein said determining whether said series of operating system events is unrelated comprises:

calculating an amount of time between operating system events in said series.

28.   The method of claim 27 further comprising:

clearing a first operating system event from said series in response to an amount of time between said first operating system event and a second operating system event.

29.   The method of claim 8 wherein said determining whether said series of operating system events is unrelated comprises:

determining whether said user generates a plurality of operating system events without invoking program tasks.

30.   The system of claim 17 wherein said means for determining whether a series of events is a unrelated series, comprises:

means for determining a timing relationship between events of said series of events.

31.   The system of claim 18 wherein said means for conducting a hierarchical series of searches obtains content available via the Internet, said system further comprising:

means for caching content, obtained via the Internet, indicated by said user as being responsive to a user query in a local user profile.

IX.   EVIDENCE APPENDIX

Not applicable.

X.   RELATED PROCEEDINGS

Not applicable.